

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

ADVANCED CELLULAR SYSTEMS,  
CORP.,

Plaintiff,

v.

PUERTO RICO TELEPHONE COMPANY;  
CELULARES TELEFÓNICA,

Defendants.

Civil No. 97-2511 (JAF)

**O R D E R**

This case stems from a business relationship that began in 1986 between Plaintiff Advanced Cellular Systems ("ACS") and Defendant Puerto Rico Telephone and its subsidiary, Celulares Telefónica ("PRT"), whereby Plaintiff purchased cellular services and numbers from Defendants to sell to consumers. On October 14, 1997, Plaintiff brought the present action against Defendants, alleging violations of the Sherman Act and the Federal Communications Act, and breach of contract, and the case was assigned to District Court Judge Gilberto Gierbolini. Docket Document No. 1. Plaintiff filed a bankruptcy petition on November 6, 1998, and simultaneously moved to remove this litigation to the bankruptcy court for consolidation with those proceedings; Judge Gierbolini granted the motion and closed the case. Docket Document No. 38. On November 11, 1998, the bankruptcy court remanded Plaintiff's antitrust claims to the district court, which affirmed the decision to remand on March 29, 2000.

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1 Plaintiff took no further action in this case until December 21,  
2 2006, when it filed a motion to amend its 1997 complaint. Docket  
3 Document No. 43-1. By that time, Judge Gierbolini had retired, and  
4 the case had been reassigned to the undersigned. Docket Document  
5 No. 42. We denied Plaintiff's motion on April 19, 2007, explaining  
6 that Plaintiff's six-and-a-half-year delay in pursuing its claims  
7 rendered them untimely. Docket Document No. 65. Plaintiff moved for  
8 reconsideration on May 2, 2007. Docket Document No. 66. Defendant  
9 opposed on May 7, 2007, Docket Document No. 67, and Plaintiff replied  
10 on May 15, 2007, Docket Document No. 69. On July 18, 2007, we  
11 ordered Plaintiff to show cause why we should not dismiss this case  
12 for lack of diligent prosecution, in light of the lengthy and  
13 unjustified delay between the remand of its claims to the district  
14 court and its motion to amend. Docket Document 73. Plaintiff  
15 complied on August 2, 2007. Docket Document No. 75.

16 "A district court's inherent powers to sanction parties for  
17 litigation abuses include the power to act sua sponte to dismiss a  
18 suit for failure to prosecute." Diaz-Santos v. Dep't of Educ. Of  
19 P.R., 108 Fed. Appx. 638, 640 (1st Cir. 2004). Extremely protracted  
20 inaction, measured in years, provides a basis for dismissal based on  
21 lack of prosecution. See Ortiz-Anglada v. Ortiz-Perez, 183 F.3d 65,  
22 67 (1st Cir. 1999); Cosme Nieves v. Deshler, 826 F.2d 1, 2 (1st Cir.  
23 1987). "[W]hen a considerable amount of time has passed between the  
24 filing of the complaint and the motion to amend," the movant must  
25 "show some valid reason for his neglect and delay." United States

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1 Inv. & Dev. Corp. v. Cruz, 780 F.2d 166, 168 (1st Cir. 1986).  
2 Plaintiff has failed to make any such showing.

3 Instead, Plaintiff attempts to lay responsibility for its  
4 failure to prosecute on the court, alleging that motions pending from  
5 before Plaintiff removed its case to Bankruptcy Court in 1998  
6 required a response before Plaintiff could proceed with the district  
7 court case. Docket Document No. 75. It is axiomatic, however, that  
8 once this case was closed upon Plaintiff's request, then remanded to  
9 this court, it fell upon Plaintiff to file new motions regarding  
10 discovery or amendments, as it eventually did in 2006.

11 Plaintiff also argues that it diligently prosecuted its  
12 bankruptcy court case. Id. That fact has no bearing on the  
13 proceedings in this court. Finally, Plaintiff asserts that it had  
14 "no way of knowing that its case [wa]s at risk of being dismissed."  
15 Id. Plaintiff ignores the fact that we issued an order to show  
16 cause, Docket Document No. 73, explicitly informing it of this fact.  
17 As outlined in this opinion, we do not find the reasons Plaintiff  
18 provided in response to that order to justify the six-year delay  
19 compelling.

20 In accordance with the foregoing, we hereby **DISMISS** this case  
21 for lack of prosecution. This case is now closed.

22 **IT IS SO ORDERED.**

23 San Juan, Puerto Rico, this 16<sup>th</sup> day of August, 2007.

24 S/José Antonio Fusté  
25 JOSE ANTONIO FUSTE  
26 Chief U.S. District Judge